

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: February 11, 2016

Agenda Item: Navratil Property Channel Migration Easement

Division: Fisheries

Action Needed: Final

Time Needed on Agenda for this Presentation: 15 Min

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Background

A channel migration easement is an easement on land bordering a stream or river that precludes the owner from rip-rapping a bank or otherwise disrupting natural erosive processes. In collaboration with the Western Area Power Administration (WAPA) and the Upper Basin Pallid Sturgeon Governing Board and Work Group, FWP developed a pilot Channel Migration Easement Program to protect naturally functioning floodplains along the Yellowstone River, which sustain Pallid Sturgeon and other aquatic and terrestrial wildlife. In 2009 and 2010, WAPA provided FWP funds to develop and implement the program for the Yellowstone and Missouri Rivers. At that time, FWP was unable to locate a willing seller for an acceptable price. In 2013, Montana Aquatic Resource Services (MARS), after entering an agreement with FWP to use the WAPA funds, located a willing seller. The Navratils own approximately 230 acres on the Lower Yellowstone River, 89.5 acres of which are in the channel migration zone and adjacent erosion hazard area. MARS sought a third party to hold the easement: The Montana Land Reliance (MLR) agreed to do so. On October 16, 2014, the Commission endorsed FWP negotiating the terms of a conservation easement on 89.5 acres of property belonging to Gerald and Maryellen Navratil. This easement would be held by the Montana Land Reliance, with FWP retaining a third-party right of enforcement.

Public Involvement Process & Results

Terms of the easement with third-party right of enforcement are agreed to and the Buy Sell Agreement has been signed by all parties. An Environmental Assessment was made available for public comment on January 11, 2016. The 18-day public comment ended January 29, 2016. A public hearing specific to this Environmental Assessment was held in Sidney, MT on January 27, 2016 where additional public comments were obtained. In addition, the EA was mailed to 18 groups and individuals, advertised in local papers and posted on www.fwp.mt.gov. Most public comments were received at the hearing held in Sidney on January 27, 2016. Three additional comments were received via email. The comments raised several concerns that are detailed and addressed in the Record of Decision (provided).

Alternatives and Analysis

Proposed Action: Release dedicated WAPA funds to purchase a channel migration easement on 89.5 acres along and adjacent to the Yellowstone River owned by Gerald and Maryellen Navratil. The easement would protect the natural erosive processes of the river, thereby helping to create habitat conditions necessary for the survival of the pallid sturgeon. MLR would hold and monitor the easement. FWP would hold a third-party right of enforcement.

No Action alternative: FWP would forgo the opportunity to help protect natural erosive processes on the Navratil property.

Agency Recommendation & Rationale

The proposed CME is not without controversy and concern. In light of these concerns, we recommend making this purchase, only if MARS and MLR can first resolve the downstream landowner and leasee's concerns that the CME will compromise the long-term ability to protect the downstream lateral and future farming operations.

Proposed Motion

I move that the Commission approve the channel migration easement and its purchase on 89.5 acres of property belonging to Gerald and Maryellen Navratil, to be held by the Montana Land Reliance, enforceable by FWP -subject to a satisfactory resolution between MARS, MLR, and the downstream landowner and leasee regarding the ability to protect the downstream lateral and future farming operations.